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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,769	12/30/2003	Janko Budzisch	6570P054	1028
45962	7590	01/23/2009		
SAP/BSTZ			EXAMINER	
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			ART UNIT	PAPER NUMBER
			2176	
			MAIL DATE	DELIVERY MODE
			01/23/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/749,769

Applicant(s)

BUDZISCH ET AL.

Examiner

Henry Orr

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/1/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/1/2008 has been entered.

DETAILED ACTION

1. This action is responsive to applicant's amendment dated 12/1/2008.
2. Claims 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 are pending in the case.
3. Claims 4, 9, 14, 19, 24, 29, 31-49 are cancelled.
4. Claims 1, 11 and 21 are independent claims.

Applicant's Response

5. In Applicant's response dated 12/1/2008, applicant has amended the following:
 - a) Claims 1, 11 and 21

Information Disclosure Statement

6. The information disclosure statement (IDS) submitted on 12/1/2008 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner is considering the information disclosure statement.

Specification

7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter **“specially created”** as recited in independent claims 1, 11 and 21. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

Claim Objections

8. Claims 12, 13, 15-18 and 20 are objected to because of the following informalities: each claim preamble references a “machine readable medium” of a preceding claim. However, the claims ultimately depend upon claim 11, which recites an “article of manufacture.” Thus, the claims should be amended to correspond to Claim 11. Appropriate corrections are required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 11-13, 15-18, 20-23, 25-28 and 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 11:

In summary, Claim 11 recites an *"article of manufacture"* comprising a *"stored program code which when read and processed by one or more processors causes said one or more processors to perform [method steps]."* As currently recited, the examiner interprets the *"article of manufacture"* to include neither the component that *"stores"* the *"program code"* nor the *"one or more processors."* Moreover, the Specification expressly discloses that propagation media and data signals *"store"* machine-executable instructions (i.e., the recited *"program code"*) (see Page 44, Paragraph 00109). Additionally, the Specification appears to indicate that the recited *"one or more processors"* are not computer hardware components (see Pages 43-44, Paragraph 00108, second and third sentences). Thus, the recited *"article of manufacture"* is not a process, a machine, a manufacture or a composition of matter.

Accordingly, Claim 11 fails to recite statutory subject matter as defined in 35 U.S.C. 101.

Claims 12, 13, 15-18 and 20:

Claims 12, 13, 15-18 and 20 do not further define the recited *"article of manufacture"* as being within a statutory process, machine, manufacture or composition of matter.

Accordingly, Claims 12, 13, 15-18 and 20 fail to recite statutory subject matter as defined in 35 U.S.C. 101.

Claim 21:

In summary, Claim 21 recites a “*computer system*” comprising a “*stored program code that **when read and processed by** one or more processors cause a method to be performed, said method comprising: [method steps].*” As currently recited, the examiner interprets the “*computer system*” to include neither the component that “stores” the “*program code*” nor the “*one or more processors*.” Moreover, the Specification expressly discloses that propagation media and data signals “store” machine-executable instructions (i.e., the recited “*program code*”) (see Page 44, Paragraph 00109). Additionally, the Specification appears to indicate that the recited “*one or more processors*” are not computer hardware components (see Pages 43-44, Paragraph 00108, second and third sentences). Thus, the recited “*computing system*” is not a process, a machine, a manufacture or a composition of matter.

Accordingly, Claim 21 fails to recite statutory subject matter as defined in 35 U.S.C. 101.

Claims 22, 23, 25-28 and 30:

Dependent claims 22, 23, 25-28 and 30 are rejected for fully incorporating the deficiencies of base claim 21.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1, 11 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Saylor et al. (hereinafter "Saylor"), U.S. Patent No 2002/0186238 A1.

Claim 1:

Saylor teaches a method, comprising reading program code from memory and processing said program code with one or more processors to perform the following method: displaying a tree on a graphical user interface, (see abstract, par. 23, par. 25)

said tree comprising: a first node that identifies a testing scenario for an object oriented business logic process; (see par. 51, par. 63, Figure 5A– testing resources (i.e., nodes) of a business process)

a plurality of sub nodes of said first node, each of said plurality sub nodes identifying a different object oriented software component of said business logic process (see par. 51, par. 64– resources may represent different applications)

each of said plurality of sub nodes capable of spawning its own sub tree (see par. 11, par. 146, Figure 9B)

that includes a specially created node that identifies a computing system within which an instance of its sub node's corresponding software component is instantiated; (see par. 64-65, par. 141, Figure 5A- resources identifying roles within a system)

a specially created availability node that indicates said instance is unavailable when said instance is unavailable (see par. 97 – failure status is interpreted to mean the resource is unavailable)

said indication that said instance is unavailable being made with a color that is different than another color used to indicate said instance is available when said instance is available; (see par. 135 – severity can be reflected using different colors)

a specially created heart beat node that is separate from said availability node and displays text contained in a message received from a network, said message pertaining to said instance and part of said testing scenario; (see par. 97, par. 141-144 – e.g. mouse over resource to display message “11 alarms over the last 30 minutes”)

displaying a feature on said graphical user interface apart from said tree, said feature showing non working testing scenarios for other business logic processes, said feature including a second tree, said second tree including: i) a scenario error node that identifies a scenario that is experiencing an error; ii) a second node that displays a specific error. (see par. 3, par. 95-97, par. 146 – drilldown items in a separate window displaying failed network resources of business

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process) Examiner interprets the "drill down" display within the separate window display to be a second tree (e.g. duplicate fishbone layout with nodes and corresponding failure status in a separate window) because a user can "drill down" to different hierarchical levels.

Claim 11:

Claim 11 includes a program embodied on a computer readable medium to implement the steps that are substantially encompassed in method claim 1; therefore the claim is rejected under the same rationale as method claim 1 above.

Claim 21:

Claim 21 is a system claim and is substantially encompassed in method claim 1; therefore the system claim is rejected under the same rationale as method claim 1 above.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 2, 3, 5-8, 10, 12, 13, 15-18, 20, 22, 23, 25-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saylor as cited above, in view of Oliver et al. (hereinafter "Oliver"), U.S. Published Application No. 2003/0225876.

Claims 2 and 3:

Saylor fails to expressly teach availability as a percentage over a fixed time interval.

However, Oliver teaches *"network elements may be monitored by, for example, polling them in five minute intervals", "polling operation may be configured to retrieve from the monitored network elements performance metrics" (i.e., application availability) (see par. 22) and "a different color is assigned to each performance level between 0% and 100% in increments of 10" (see par. 26). (claim 2; i.e., wherein said availability node indicates availability as a percentage.) (claim 3; i.e., wherein said percentage is calculated over a fixed time interval.)*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the performance reports as taught by Saylor to include an indicate the availability of a monitored resource as a percentage over a fixed time interval as taught by Oliver to provide the benefit of allowing users to more easily analyze and monitor the availability of a resource (see Saylor; par. 154) (see Oliver; abstract, par. 22, par. 26).

Claim 5:

Sylor teaches **wherein said message was sent over a network within an IS infrastructure from a location where said one or more software components were tested for availability.** (see par. 51, par. 200)

Claim 6:

Sylor fails to expressly teach a message comprising of an XML document.

However, Oliver teaches *"In step 715, the performance metrics are translated according to a schema prior to transmission over the performance message queue. The translation may be made according to any convenient schema. According to one embodiment of the present invention, the translation is made into an XML format. Subsequently in step 720, the polling agent publishes the performance metrics as XML messages over the performance queue. The performance messages are read by the performance monitor and the archive 205 which stores the performance metric data in an archival format as previously described"* (see par. 53). **(claim 6; i.e., wherein said message further comprised an .XML document.)** Examiner interprets the performance message to be compatible with a XML document because the performance metrics inside the performance message are translated into XML format.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ASCII file as taught by Sylor to include performance metrics translated in XML format (i.e., creating an XML document) as taught by Oliver to provide the benefit of having a known format and structure that easily permits the

extraction of network element identifiers and associated performance metrics to be periodically published over a network message queue to users monitoring and measuring the availability of network resources (see Sylor; par. 200) (Oliver; par. 7, par. 24).

Claim 7:

Sylor teaches **wherein said message further included an indication that the particular software component instance to which said text is presented in reference to is unavailable.** (see par. 95-97, par. 141-144)

Claim 8:

Sylor teaches wherein said text is presented in the color red. (see par. 135)

Claim 10:

Sylor teaches **wherein said feature is a second tree.** (see par. 146)

Examiner interprets the "drill down" display within the separate window display to be a tree because a user can "drill down" to different hierarchal levels.

Claims 12, 13, 15-18 and 20:

Claims 12, 13, 15, 16, 17, 18 and 20 include a program embodied on a computer readable medium to implement the steps that are substantially encompassed in method

claims 2, 3, 5, 6, 7, 8 and 10 respectively; therefore the claims are rejected under the same rationale as method claims 2, 3, 5, 6, 7, 8 and 10 above.

Claims 22, 23, 25-28 and 30:

Claims 22, 23, 25, 26, 27, 28 and 30 are system claims and are substantially encompassed in method claims 2, 3, 5, 6, 7, 8 and 10 respectively; therefore the system claims are rejected under the same rationale as method claims 2, 3, 5, 6, 7, 8 and 10 above.

Response to Arguments

Applicant's arguments filed 12/1/2008 have been fully considered but they are not persuasive.

In response to Applicant's summary of Examiner's arguments presented in advisory action dated 10/14/2008, Examiner respectfully disagrees with item 4) which recites *"Sylor resource profile of paragraph [0135] meets both the Applicant's 'availability node' and 'heartbeat node' limitations because the Applicant's claims do not indicate that they are separate nodes."* see Response p. 12

Instead, Examiner submits that Sylor resource profile is capable of meeting both the Applicant's "availability node" and heartbeat node" limitations. In other words, Examiner does not agree that amending claims to recite separate nodes would

overcome the Saylor reference. In respect to the Advisory action, Examiner was trying to make the point that the Applicant should argue the actual claim language instead of inaccurate versions of the claim language.

In response to the Advisory Action, The Applicant responds accordingly:

- 1) The Applicant's point is that Figs. 2a-3b and paragraphs [0106] through [0159] of Saylor are the only disclosure that pertain to a GUI. To the extent the Examiner is relying on subject matter outside these regions of Saylor, these regions cannot possibly teach features of a GUI. The Examiner cites the recital of a fishbone in the abstract as a counter argument. However Figs 2a, 2b and 3a of Saylor disclose a fishbone. Therefore the Examiner has not effectively addressed the Applicant's position.
- 2) Paragraph [0097] is not within the [0106] through [0159] region of Saylor, therefore paragraph does not disclose anything about a GUI and cannot meet the Applicant's "availability node".
- 3) The Applicant has amended the claims to recite that the nodes are specially created.
- 4) The Applicant has amended the claims to indicate that the availability and heartbeat nodes are separate nodes.
- 5) The mouseover dialog 517 as drawn in Saylor is not part of a subtree. Therefore it cannot meet the Applicant's claimed "heartbeat node". see Response p. 13

Moreover, the Applicant has further amended the claims to advance the prosecution of the present case. Specifically, the Applicant has added a "second tree" and corresponding elements.

Thus, the Applicant respectfully submits that the Saylor reference simply does not describe GUI details sufficient to meet the Applicant's claimed GUI. Therefore the Applicant respectfully requests the removal of the outstanding rejection and the allowance of the instant application.

Examiner respectfully disagrees.

In response to #1: Examiner submits that the entire disclosure of Saylor is prior art under 35 U.S.C. 102 (a). Therefore, Examiner is not limited to any one portion of the Saylor reference.

In response to #2: Examiner submits that the entire disclosure of Saylor is prior art under 35 U.S.C. 102 (a). Therefore, Examiner is not limited to any one portion of the Saylor reference. In addition, in paragraph 97, Saylor describes an alarm that is created for a resource profile. The alarm may indicate a failure status of the resource represented by the resource profile. Therefore, by describing an alarm that is associated with a resource profile that is rendered in a GUI(see abstract), Saylor discloses something (i.e., alarm information of rendered resource profile) about the GUI in par. 97.

In response to #3: Amendments (i.e., specially created) does not patentably distinguish the claimed subject matter over the Sylor reference.

In response to #4: Amendments (i.e., availability and heartbeat nodes are separate nodes) does not patentably distinguish the claimed subject matter over the Sylor reference. Examiner interprets the resource profile as capable of serving as the "availability" node and the "heart beat" node as recited in the claims. Sylor teaches a plurality of resource profiles. Therefore, there may be a resource profile that functions as the "availability" node by displaying a "failure" status and there may be another resource profile that functions as the "heart beat" node by displaying a text message via dialog mechanism.

In response to #5: Although, the mouseover dialog is not visually attached to the subtree, Examiner submits that the mouseover dialog is part of the subtree. The mouse dialog and the resource profile node must work together to display a text message. Furthermore, Examiner is not relying on the mouseover dialog alone to teach the heart beat node. Instead, the resource profile displaying text via separate dialog is considered to anticipate the heartbeat node displaying text as recited in the claims.

In response to the added "second tree", Sylor teaches having a separate window with the fishbone layout. Therefore the second tree is interpreted to be a read on a duplicate of the fishbone layout that Sylor is capable of opening in a separate window

(see par. 146). The resource profile (i.e., both the scenario error node and second node) of the fishbone layout (i.e., second tree) in the separate window is capable of displaying a failure status (i.e., experiencing an error).

For at least the foregoing reasons, Examiner maintains Prior Art Rejections.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry Orr whose telephone number is (571) 270 1308. The examiner can normally be reached on Monday thru Friday 8 to 4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached on (571) 272-4137. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

1/14/2009
HO

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